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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

|                           |   |                  |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | ) |                  |
| Plaintiff,                | ) |                  |
| v.                        | ) | Civil Action No. |
|                           | ) |                  |
| CITY OF WINSLOW, ARIZONA; | ) |                  |
| WILLIAM R. CHRISTIE; and  | ) | <u>Complaint</u> |
| JOHN ROCHE,               | ) |                  |
| Defendants.               | ) |                  |
|                           | ) |                  |

## **COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States, through the undersigned attorneys, and at the request of the United States Environmental Protection Agency ("EPA"), alleges as follows:

### **NATURE OF ACTION**

1. The Clean Air Act ("CAA" or "the Act"), as amended, 42 U.S.C. § 7401–7671q, establishes a comprehensive scheme to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401(b)(1).

2. This is a civil action under Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for civil penalties against defendants the City of Winslow ("Winslow" or the "City"), William R. Christie, Sr., ("Christie"), and John Roche ("Roche"), for violations of the CAA and the National Emission Standard for Hazardous Air Pollutants for asbestos, 42 U.S.C. § 7412 and 40 C.F.R. Part 61, Subpart M "Asbestos NESHAP").

3. These violations relate to the demolition and disposal of the Apache Apartments (the "Buildings" or the "Facility"), a nine-building complex located and doing business at the 1100 Block of Apache Avenue, Winslow, Arizona, 86047, including the breaking up of, collection, transport and burning of asbestos-containing materials ("ACMs") from the Facility.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331, 1345, 1355.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c), 1395(a), and Section 113(b) of the Act, 42 U.S.C. § 7413(b), because it is the judicial district in which the alleged violations occurred.

6. Notice of this action has been given to the Arizona Department of Environmental Quality (“ADEQ”) pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

## **DEFENDANTS**

7. Defendant the City is a municipality with offices located in the City of Winslow City Hall at 21 Williamson Avenue, Winslow, Arizona, 86047.

8. Defendant Christie was the owner of the Facility at the time of the violations and is a resident of Winslow, Arizona.

9. Defendant Roche was the City Administrator at the time of the violations and is a former resident of Winslow, Arizona.

## **STATUTORY AND REGULATORY SCHEME**

10. Section 112(b)(1) of the Act sets forth a list of hazardous air pollutants for which the Administrator of the EPA (the “Administrator”) is required to promulgate emission standards. 42 U.S.C. § 7412(a)(6), (b), (d). These emission

standards are known as the National Emission Standards for Hazardous Air Pollutants ("NESHAP").

11. Section 112(f) of the Act prohibits stationary sources from emitting an air pollutant to which a NESHAP applies in violation of that NESHAP. 42 U.S.C. § 7412(f)(4).

12. Asbestos is listed in Section 112(b)(1) of the Act, 42 U.S.C. § 7412(b)(1), as a hazardous pollutant having been so designated by the Administrator pursuant to Section 112(b)(2), 42 U.S.C. § 7412(b)(2).

13. In 1973, the Administrator promulgated the NESHAP regulations for asbestos, which were codified at 40 C.F.R. Part 61, Subpart B, §§ 61.20–61.25.

14. The current Asbestos NESHAP regulations are located at 40 C.F.R. Part 61, Subpart M, and were adopted by the EPA on November 20, 1990. 55 Fed. Reg. 48406-433 (November 20, 1990).

16. “Adequately wet,” as used in the Asbestos NESHAP, means to “sufficiently mix or penetrate with liquid to prevent the release of particulates.” 40 C.F.R. § 61.141. “If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted.” 40 C.F.R. § 61.141.

17. The Asbestos NESHAP defines “asbestos-containing waste materials” (“ACWM”) as defined as “any waste that contains commercial asbestos and is generated by a source subject to the provisions of Subpart M. This term includes

filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.” 40 C.F.R. § 61.141.

18. The Asbestos NESHAP defines “Category I nonfriable asbestos-containing material” as “asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos.” 40 C.F.R. § 61.141.

19. The Asbestos NESHAP defines “Category II nonfriable Asbestos-Containing Material (“ACM”)” as “any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141.

20. The Asbestos NESHAP defines “demolition” as “the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.” 40 C.F.R. § 61.141.

21. The Asbestos NESHAP defines “facility” as “any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or

individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.” 40 C.F.R. § 61.141.

22. The Asbestos NESHAP defines “friable ACM” as “any material containing more than 1 percent asbestos . . . that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141.

23. The Asbestos NESHAP defines the phrase “in poor condition” as meaning that “the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.” 40 C.F.R. § 61.141.

24. The Asbestos NESHAP defines “nonfriable ACM” as “any material containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141.

25. The Asbestos NESHAP defines an “owner or operator of a demolition activity” as “any person who owns, leases, operates, controls or supervises the facility being demolished or any person who owns, leases, operates, controls or supervises the demolition operation, or both.” 40 C.F.R. § 61.141.

26. The Asbestos NESHAP defines “regulated asbestos-containing material” (RACM)” as “(a) friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled,

pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.” 40 C.F.R. § 61.141.

27. The General NESHAP regulations define a “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator.” 40 C.F.R. § 61.02.

28. The Asbestos NESHAP defines “visible emissions” as “any emissions, which are visually detectable without the aid of instruments, coming from RACM or ACWM.” 40 C.F.R. § 61.141.

29. The Asbestos NESHAP defines “waste shipment record” as “the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.” 40 C.F.R. § 61.141.

30. Pursuant to 40 C.F.R. § 61.145(a)(1) of the Asbestos NESHAP, the notification and work practice requirements of 40 C.F.R. § 61.145(b) and (c) apply to each owner or operator of a demolition or renovation activity if a facility contains at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components (where the length or area could not be measured previously) of RACM.

31. Pursuant to 40 C.F.R. § 61.145(b), each owner or operator of a demolition or renovation activity falling within the thresholds set forth at

61.145(a)(1) must provide written notice of intention to demolish at least 10 working days before asbestos stripping or removal work or any other activity begins. 40 C.F.R. § 61.145(b)(3)(i).

32. Each owner or operator of a demolition activity falling within the thresholds set forth at 61.145(a)(1) must remove all RACM from a facility being demolished “before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.” 40 C.F.R. § 61.145(c)(1). RACM need not be removed if it is “Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.” 40 C.F.R. § 61.145(c)(1)(iv).

33. Each owner or operator of a demolition or renovation activity falling within the thresholds set forth at 40 C.F.R. Section 61.145(a)(1) must adequately wet the RACM and ensure that it remains wet until collected and contained or treated for disposal in accordance with 40 C.F.R. § 61.150. 40 C.F.R. § 61.145(c)(6)(i).

34. Each owner or operator of a facility undergoing demolition activity regulated under 40 C.F.R. Section 61.145 must not discharge visible emissions of asbestos to the outside air during the collection, processing (including incineration), packaging or transporting of any ACWM generated by the source



unless the waste is kept adequately wet or the waste is processed into nonfriable forms with no visible emissions. 40 C.F.R. § 61.150(a).

35. Each owner or operator of a facility undergoing demolition activity regulated under 40 C.F.R. Section 61.145 must maintain waste shipment records for all ACWM transported off the facility site. 40 C.F.R. § 61.150(d).

36. Pursuant to Section 113(b) of the Act, 42 U.S.C. Section 7413(b), any person who violates a requirement or prohibition of subchapter I of the Act, which includes Section 112, 42 U.S.C. § 7412, including a requirement or prohibition of any rule promulgated under the Act, is subject to a civil action for a civil penalty of not more than \$27,500 per day for each violation occurring on or after January 31, 1997, and on or before March 14, 2004. 42 U.S.C. § 7413(b); 40 C.F.R. § 19.4.

### **GENERAL ALLEGATIONS**

37. The Apache Apartments were a “facility” within the meaning of the Asbestos NESHAP, 40 C.F.R. § 61.141.

38. At all times relevant to this Complaint, the Facility contained RACM of at least 260 linear feet on pipes, 160 square feet on other Facility components, or 35 cubic feet off Facility components where the length or area could not be measured previously.

39. Christie is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), which defines “person” to include individuals.

40. At all times relevant to this Complaint, Christie was the owner of the Facility.

41. Christie, Roche and the City were each an “owner or operator” of a demolition or renovation activity as defined by 40 C.F.R. § 61.141.

42. Christie, Roche and the City were each an “owner or operator” of a source as referenced in 40 C.F.R. § 61.150.

43. The City is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), which defines “person” to include municipalities and political subdivisions of a state.

44. The City, acting through its officers, senior management personnel, and other employees, controlled and supervised the demolition, transport and disposal of the Facility.

45. The City was therefore an “operator” of the demolition of the Facility as defined by 40 C.F.R. § 61.141.

46. Roche is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), which defines “person” to include individuals.

47. Roche was the City Administrator for the City at all times relevant to this Complaint.

48. As City Administrator, Roche was a member of the City’s senior management personnel.

49. Roche supervised and controlled the demolition, transport, and disposal of the Apache Apartments Facility.

50. Roche was therefore an “operator” as defined by 42 U.S.C. § 7413(h) and 40 C.F.R. § 61.141.

51. In early 2002, the City declared the Facility “uninhabitable” under the City Housing Code and issued an order to Christie to abate a public nuisance.

52. On May 10, 2002, Christie and the City signed an agreement stating that Christie would remove asbestos-containing transite siding from the Buildings and pay \$3,000 to the City. In return, the City agreed to use its own crews to demolish and haul away all structures on the property. The Winslow City Council ratified the agreement on May 22, 2002.

53. The demolition of the Apache Apartments (the “demolition activity”) began on June 3, 2002.

54. Defendants Christie, the City and Roche failed to submit any written notice of intention to demolish the Apache Apartments Facility to the ADEQ before the demolition activity began.

55. On June 25, 2002, the City had demolished some or all of four of the nine buildings in the Apache Apartments Facility.

56. On June 25, 2002, the ADEQ notified the City that it was subject to the Asbestos NESHAP, that demolition activities of the Facility were to cease pending

a thorough asbestos survey, and that an asbestos demolition notification was to be submitted before activities resumed.

57. Defendant Roche refused to comply with the Asbestos NESHAP.

58. On June 25, 2002, the five buildings remaining in the Apache Apartments Facility contained 35,750 square feet of RACM in the form of Category II friable wall texture and Category II nonfriable transite wallboard.

59. The City began demolishing the remaining five buildings at the Apache Apartments Facility on or before September 5, 2002.

60. Defendants Christie, the City and Roche again failed to submit any written notice of intention to demolish before the demolition activity resumed.

61. Between June 3, 2002, and October 25, 2002, the City caused ACWM from the Facility to be transported to an open field owned by the City (the “Burn Site”) and burned.

62. Between June 3, 2002, and October 25, 2002, the City caused ACWM from the Facility to be transported to the Painted Desert Landfill.

63. Defendants Christie, the City, and Roche failed to make and keep waste shipment records in the form required by the asbestos NESHAP in relation to the transfer of ACWM from the Facility to the Painted Desert Landfill or from the Facility to the Burn Site.

64. From September 5, 2002 until October 25, 2002, at the Burn Site, Defendants Christie, the City, and Roche failed to adequately wet piles of burned

ACWM from the Apache Apartments Facility and failed to ensure that the ACWM remained wet until collected and contained or treated for disposal.

65. From September 5, 2002 until October 25, 2002, at the Burn Site, Defendants Christie, the City, and Roche failed to ensure that no visible emissions of asbestos were discharged to the outside air from piles of burned ACWM from the Apache Apartments Facility.

**FIRST CLAIM FOR RELIEF**  
**FAILURE TO NOTIFY**

66. Paragraphs 1 through 65 are re-alleged and incorporated herein.

67. Pursuant to 40 C.F.R. § 61.145(b), each owner or operator of a demolition or renovation activity falling within the thresholds set forth at 61.145(a)(1) must provide written notice of intention to demolish at least 10 working days before asbestos stripping or removal work or any other activity begins. 40 C.F.R. § 61.145(b)(3)(i).

68. Pursuant to 40 C.F.R. § 61.04(c), the Arizona Department of Environmental Quality is delegated the authority to receive demolition notifications for EPA in Arizona. 40 C.F.R. § 61.04(c)(9)(i).

69. Defendants Christie, the City and Roche failed to submit any written notice of intention to demolish within 10 working days before the demolition activity at the Facility began on June 3, 2002.

70. After the June 25, 2002, inspection, defendants Christie, the City and Roche again failed to submit any written notice of intention to demolish within 10 working days before the demolition activity resumed sometime between June 25, 2002, and September 5, 2002.

71. The failures of Christie, the City and Roche to submit the required notice of demolition of the Facility to the ADEQ is a violation of 40 C.F.R. § 61.145(b) and Section 112 of the Act, 42 U.S.C. § 7412.

72. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), defendants Christie, the City and Roche are each subject to civil penalties of not more than \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, and the Asbestos NESHAP, 40 C.F.R. § 61.145(b).

**SECOND CLAIM FOR RELIEF**  
**FAILURE TO REMOVE RACM**

73. Paragraphs 1 through 72 are re-alleged and incorporated herein.

74. Each owner or operator of a demolition activity falling within the thresholds set forth at 40 C.F.R. Section 61.145(a)(1) must remove all RACM from a Facility being demolished “before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.” 40 C.F.R. § 61.145(c)(1). RACM need not be removed if it is “Category II nonfriable ACM and the probability is low that the materials will

become crumbled, pulverized, or reduced to powder during demolition.” 40 C.F.R. § 61.145(c)(1)(iv).

75. On June 25, 2002, the five buildings remaining in the Apache Apartments Facility contained 35,750 square feet of RACM in the form of Category II friable wall texture and Category II nonfriable transite wallboard.

76. The 35,750 square feet of ACM was RACM that was required to be removed because it was friable or because it was Category II, nonfriable, for which the probability was not low it would become crumbled, pulverized, or reduced to powder during demolition.

77. Defendants Christie, the City and Roche failed to remove the 35,750 square feet of RACM prior to the demolition activity that took place between June 25, 2002, and September 5, 2002.

78. The failures of Christie, the City and Roche to remove the RACM prior to an activity that would likely disturb the material is a violation of 40 C.F.R. § 61.145(c)(1) and Section 112 of the Act, 42 U.S.C. § 7412.

79. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), defendants Christie, the City and Roche are each subject to civil penalties of not more than \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, and the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(1).

**THIRD CLAIM FOR RELIEF**  
**FAILURE TO KEEP RACM ADEQUATELY WET**

80. Paragraphs 1 through 79 are re-alleged and incorporated herein.

81. Each owner or operator of a demolition or renovation activity falling within the thresholds set forth at 40 C.F.R. Section 61.145(a)(1) must adequately wet the RACM and ensure that it remains wet until collected and contained or treated for disposal in accordance with 40 C.F.R. § 61.150. 40 C.F.R. § 61.145(c)(6)(i)..

82. From September 5, 2002 until October 25, 2002, at the Burn Site, Defendants Christie, the City, and Roche failed to adequately wet piles of burned ACWM from the Apache Apartments Facility and failed to ensure that the ACWM remained wet until collected and contained or treated for disposal.

83. The failures of defendants Christie, the City, and Roche to adequately wet the RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150 during both the demolition and the disposal of the Facility is a violation of 40 C.F.R. § 61.145(c)(6)(i) and Section 112 of the Act, 42 U.S.C. § 7412.

84. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), defendants Christie, the City, and Roche are each subject to civil penalties of not more than \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, and the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i).



**FOURTH CLAIM FOR RELIEF**  
**FAILURE TO DISCHARGE NO VISIBLE EMISSIONS**

85. Paragraphs 1 through 84 are re-alleged and incorporated herein.

86. Each owner or operator of a facility undergoing demolition activity regulated under 40 C.F.R. Section 61.145 must not discharge visible emissions of asbestos to the outside air during the collection, processing (including incineration), packaging or transporting of any ACWM generated by the source unless the waste is kept adequately wet or the waste is processed into nonfriable forms with no visible emissions. 40 C.F.R. § 61.150(a).

87. From September 5, 2002 until October 25, 2002, at the Burn Site, Defendants Christie, the City, and Roche failed to ensure that no visible emissions of asbestos were discharged to the outside air from piles of burned ACWM from the Apache Apartments Facility.

88. The failure of defendants Christie, the City, and Roche to prevent the discharge of visible emissions of asbestos to the outside air during the processing of ACWM during the disposal of the Facility is a violation of 40 C.F.R. § 61.150(a) and Section 112 of the Act, 42 U.S.C. § 7412.

89. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), defendants Christie, the City, and Roche are subject to civil penalties of not more than \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, and the Asbestos NESHAP, 40 C.F.R. § 61.150(a).

**FIFTH CLAIM FOR RELIEF**  
**FAILURE TO COMPLETE WASTE SHIPMENT RECORDS**

90. Paragraphs 1 through 89 are re-alleged and incorporated herein.

91. Each owner or operator of a facility undergoing demolition activity regulated under 40 C.F.R. Section 61.145 must maintain waste shipment records for all ACWM transported off the facility site. 40 C.F.R. § 61.150(d).

92. Defendants Christie, the City, and Roche failed to make and keep the required waste shipment records in relation to the transfer of ACWM from the Apache Apartments Facility site to the Painted Desert Landfill or from the Apache Apartments Facility site to the Burn Site.

93. The failure of defendants Christie, the City, and Roche to maintain waste shipment records for all ACWM transported off the Facility site is a violation of 40 C.F.R. § 61.150(d) and Section 112 of the Act, 42 U.S.C. § 7412.

94. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), defendants Christie, the City, and Roche are subject to civil penalties of not more than \$27,500 per day for each violation of Section 112 of the Act, 42 U.S.C. § 7412, and the Asbestos NESHAP, 40 C.F.R. § 61.150(a).

## PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, respectfully requests  
that this Court:

1. Assess civil penalties against defendants of not more than \$27,500 per day for each violation of the Clean Air Act and the Asbestos NESHAP;
2. Award the United States its costs and disbursements incurred in this action; and
3. Grant other such relief as the Court deems just and proper.

Respectfully submitted,

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